

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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NICK WILLIAM SCHALLER,

Plaintiff,

v.

JOANN COOK and THERESA SCOTT,

Defendants.  
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MEMORANDUM

07-cv-575-bbc

This case was reopened on February 11, 2008, after I concluded that it was error to have granted defendants' motion to dismiss based on plaintiff's alleged failure to exhaust his administrative remedies. On February 20, 2008, defendants Joann Cook and Theresa Scott answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a letter in which he objects to the defendants' affirmative defenses and itemizes the damages he is seeking in this case.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff

would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

As for plaintiff's itemized list of damages, no action is necessary. Plaintiff has asked for money damages generally in the demand for relief in his complaint. An itemized list of damages is unnecessary.

#### ORDER

IT IS ORDERED that plaintiff's reply to the answer and his itemized list of damages will be placed in the court's file but will not be considered.

Entered this 7<sup>th</sup> day of March, 2008.

BY THE COURT:

\_\_\_\_\_/s/\_\_\_\_\_  
BARBARA B. CRABB  
District Judge